

109 FERC ¶ 61, 234
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

South Carolina Electric & Gas Company

Project Nos. 516-388 and -394

ORDER APPROVING NON-PROJECT USE
OF PROJECT LANDS AND WATERS

(Issued November 26, 2004)

1. On December 10, 2003, South Carolina Electric & Gas Company (SCE&G), licensee of the Saluda Project No. 516, filed an application requesting Commission approval to permit Westshore Limited (Westshore) to install a floating dock capable of berthing 40 boats, and four courtesy boat slips at the end of an existing dock, at the existing Spinners Marina, located on the project's reservoir, Lake Murray, in Richland County, South Carolina. Westshore intends to use the proposed docking facilities as a public marina. On June 25, 2004, SCG&E filed a related application requesting Commission approval to permit Westshore to excavate two lake-bottom areas covering about one acre of the marina site to provide greater boater access to the proposed marina facilities. We find the proposed facilities and excavations to be in the public interest because they will, among other things, enhance recreational boating opportunities in the upper-lake zone of Lake Murray in a safe and environmentally-compatible manner. Accordingly, as discussed below, we are granting the applications, subject to conditions.¹

¹ The Saluda license includes a standard provision (Article 30) authorizing the licensee to grant permission for certain types of non-project use and occupancy of project land without prior Commission approval. However, commercial docks that are intended to accommodate more than 10 watercraft, and large excavations, are not within the scope of uses set forth in that article, and thus can only be permitted if the licensee files, and the Commission approves, an application to amend the license to allow the facilities and uses in question.

BACKGROUND

2. The 206-megawatt Saluda Project, located on the Saluda River, 10 miles west of Columbia, South Carolina, created Lake Murray.² Lake Murray extends approximately 41 miles upstream of the Saluda Project dam and is roughly 14 miles across at the widest point. The reservoir full pool elevation is 360-foot Plant Datum (PD). It has a surface area of 50,000 acres and about 650 miles of shoreline. Deep coves and prominent peninsulas characterize the lake's 650 miles of irregular shoreline. The project boundary includes 17,152 acres of land between the reservoir's edge and the project boundary. Lake Murray is a major recreational resource for the region. The lake is used for boating, water skiing, fishing, swimming, picnicking, and camping.

3. SCE&G has a shoreline management plan (shoreline plan) for Lake Murray that is updated every five years.³ The stated purpose of the shoreline plan is to: (1) provide lake management policies to maintain and conserve the area's natural and man-made resources; (2) comply with the terms of the Saluda Project license and the Commission's regulations and orders; and (3) provide a balance between recreation and environmental protections and development control.⁴ The plan has five classifications of land uses within the project boundary: (1) easement, (2) recreation, (3) project operation, (4) forest and game management, and (5) future private development. Each classification in the plan is subject to specified land use controls, such as minimum construction setbacks, buffer zones, restrictions on

² The project was originally licensed in 1927 and was relicensed in 1984. *See South Carolina Electric & Gas Co.*, 27 FERC ¶ 61,332 (1984).

³ The plan was first approved in 1981. *See South Carolina Electric and Gas Co.*, 16 FERC ¶ 62,479 (1981). The Commission recently approved SCE&G's update to the plan. *See South Carolina Electric and Gas Co.*, 107 FERC ¶ 62,273 (2004), *order clarifying and modifying order and denying reh'g*, 109 FERC ¶ 61,083 (2004).

⁴ *See South Carolina Electric and Gas Co.*, 109 FERC at P 2.

clearing, and maintenance of wildlife habitat. The proposed boat dock facilities, and excavations, are located in an area classified as commercial recreational under SCE&G's current shoreline plan.

PROPOSED FACILITIES AND EXCAVATIONS

4. According to SCE&G, Westshore proposes to construct a 40-slip boat dock to provide public boating access to Lake Murray. The proposed dock would consist of a 180-foot-long, 4-foot-wide walkway, including a hinged ramp to accommodate lake level fluctuations and a 244-foot-long, 4-foot-wide floating dock with 22 finger docks. Each finger dock would be four feet wide by 20 feet long. Two boats would be docked within each of the 20-foot-wide spaces between the fingers. The proposed dock would be constructed onshore, floated into place about 60 feet from the adjacent shoreline, and connected to fixed piers.⁵ An existing boat ramp and 4-foot by 150-foot boat dock is located next to the proposed facilities.⁶ The proposed plans include building four courtesy slips at the end of the existing dock.

5. Westshore also proposes to excavate 3,260 cubic yards of lake-bed material around the proposed boat dock and courtesy slips.⁷ The excavation footprint for the boat dock would be 300 feet long by 120 feet wide, with a bottom elevation of 349 feet PD; the courtesy-slip-excavation footprint would be 80 feet long by 50 feet wide, with a bottom elevation of 344 feet PD. The two excavation footprints

⁵ See Figure 2 in the attached Environmental Assessment (EA) prepared by Commission staff.

⁶ The existing facilities consist of a boat ramp and a courtesy dock used as temporary docking facilities while boaters put their boats in or removes them from the water. There are no permanent docking facilities at the existing facilities.

⁷ Using the average-end-area method of calculating volume, we estimate the proposed excavations to be approximately 3,700 cubic yards, or about 440 cubic yards more than Westshore's estimate. See EA at n. 1.

would cover a total area of less than one acre. The excavated material would be placed on-site within a 20,000-square-foot disposal area.

6. SCE&G explains that when the lake's water level is lowered each year in the winter, it becomes difficult, and sometimes impossible, to launch and retrieve boats using the marina's existing boat ramp. The proposed excavations would provide deeper water and level lake-bottom areas where Westshore is proposing to place the proposed marina facilities.⁸

7. The Commission issued public notices of the applications. Comments and interventions were filed by Lake Watch on Lake Murray (Lake Watch) and the Lake Murray Association (Murray Association), a local citizen's group. Also, a number of local residents who either have homes on Lake Murray or live nearby and use the lake for recreation,⁹ including Saluda Shores Property Owners Association (Saluda Shores), filed motions to intervene and/or comments in opposition to the proposal to construct the boat dock Westshore filed a response to the intervention and/or comments filed in opposition to the proposal.¹⁰ Comments and interventions to the application for excavation were filed by the U.S. Department of Interior, Office of Environmental Policy and Compliance (DOI), Lake Watch, and Kenneth and Sandy Fox.

⁸ The bottom elevation of the completed excavation for the proposed dock would be 349 feet PD. Given the lake's normal fall drawdown to 350 feet NGVD, it appears that the excavation may extend the period when the dock slips will be usable a month on each side of the summer recreation season, although not allowing for year-round operations as Westshore claims. *See* EA at n. 9.

⁹ The attached EA lists all the filings. Richard and Gayle Ratcliffe, Frank Jr. and Tracey Taylor, and James E. and Faye P. Cromer filed late motions to intervene. We will grant these late motions to intervene, as we find that to do so will not delay, disrupt, or otherwise prejudice this proceeding or the parties to this proceeding.

¹⁰ While the Commission's Rules of Practice and Procedure generally prohibit answers to protests, the Commission will accept the answer to provide a better understanding of the issues in this proceeding. 18 C.F.R. § 385.213(a)(2)(2004).

8. Generally, those opposing the proposal to permit the boat dock argue that the proposed dock would adversely affect the cove's water quality, shoreline stability, fish and wildlife habitat, recreational uses and navigation, the quality of life and aesthetics of adjacent residents, and property values. They also contend that the proposed docks would create more boat traffic in the cove and the proposed excavations would create a safety hazard.

9. On May 7, 2004, the Commission staff issued a draft Environmental Assessment (EA), recommending approval of the boat dock proposal. The U.S. Fish and Wildlife Service (FWS) and several intervenors filed comments on the draft EA pointing out that Westshore had applied to the South Carolina Department of Health and Environmental Control (SC Health Department) and the U.S. Army Corps of Engineers (Corps) for a permit to excavate 3,260 cubic yards of lake-bottom sediment from the area of the proposed boat dock and courtesy slips.¹¹ Under the Commission's regulations, related actions should be considered in the same environmental review.¹² Therefore, the final EA reviews both the dock and the excavation proposals. The final EA also addresses comments and interventions received in response to both applications and comments received on the draft EA.

DISCUSSION

10. We have reviewed SCE&G's applications in this proceeding pursuant to the Federal Power Act's (FPA) comprehensive development/public interest standard, as informed by relevant license terms (including the approved shoreline plan), public and agency comments on the proposed non-project use, and the EA. As discussed below, the record indicates that constructing and operating the proposed facilities would cause no significant adverse impacts on water quality, shoreline

¹¹ On June 25, 2004, SCE&G filed an application with the Commission for the proposed excavations.

¹² Section 380.1 of the Commission's regulations adopts the Council on Environmental Quality's regulations implementing the Environmental Policy Act that require that connected, cumulative, and similar actions should be considered in one impact statement. *See* 40 CFR 1508.25 (2004).

stability, recreational uses, boat traffic, the quality of life of adjacent residents, safety, and property values. Further, as conditioned below, we find that construction of the docking facilities and related excavations would not interfere with project purposes.

A. Water Quality

11. Several intervenors express general concern that the proposed docking facilities and excavations would affect water quality. The proposed excavation and on-site disposal of lake-bottom material, and the construction of piers and anchorages for the proposed boat dock and courtesy slips, would have localized short-term impacts on water quality due to increased turbidity and sedimentation. However, as discussed below, we find that construction techniques and required mandatory mitigation measures will adequately minimize any potential impact the construction will have on water quality.

12. Specifically, the proposed dock would be constructed on shore and floated into place. By installing the dock in this manner, construction-related impacts on water quality would be minimized. In addition, the Corps and SC Health Department have issued permits with numerous conditions that will mitigate the potential negative impacts of the proposed construction activities.¹³ Most importantly, from a water quality standpoint, these permits require that all excavation operations be performed “in the dry” (i.e., while lake levels are below excavation-area elevations) and that all dock-installation activities be performed during minimum-pool levels.¹⁴ Because all construction will only occur when

¹³ See EA at section 5.2.1, at Environmental Effects - Water Quality.

¹⁴ We note that the Corps’ permit requires that the excavation cannot be performed when the excavation footprints are under water. Additionally, we note that SCE&G’s specifications for excavation permits also require no excavation work to be performed when the excavation site is covered with water. Given that Westshore proposes to excavate to 349 feet PD and that Lake Murray’s normal annual low-water level is 350 feet PD, this permit restriction may preclude Westshore from excavating the area until the water level is unusually low.

there is little or no water at the construction site water quality impacts due to construction activities will be minimal.

13. Long-term impacts on water quality may occur from boating activities associated with the proposed marina facilities, including leaks from boat engines, oil spills, and overboard refuse. These effects would add to the water-quality impacts of current and future boat use in the cove, which would act in concert as a cumulative adverse effect on the cove's water quality. However, we find that the SC Health Department water quality monitoring program and the water monitoring requirements in SCE&G's Commission-approved Lake Murray's shoreline plan will adequately address any potential long term impact.¹⁵

14. Specifically, the SC Health Department monitors water quality at eight stations in the lake. The closest station, Station S-279, is located approximately two miles from the proposed marina. The most current data for Station S-279 shows the water quality in the vicinity of the proposed dock to be generally good.¹⁶

15. Pursuant to the shoreline plan, SCE&G will require that Westshore collect baseline water-quality and aquatic-biology data in the vicinity of the proposed dock and courtesy slips before construction of these marina facilities begins. As specified in the shoreline plan, baseline sampling must be conducted on a weekly basis during the month of August prior to any construction. The number of sampling locations is site-specific and would be determined by the licensee in consultation with appropriate agencies. Annual monitoring of water quality would continue annually for a minimum of five years after construction is completed and 100 percent of the slips are occupied.¹⁷

¹⁵ See EA at section 5.2.1, at Environmental Effects - Water Quality.

¹⁶ See EA at section 5.2.1, at Affected Environment - Water Quality.

¹⁷ *Id.* at Environmental Effects - Water Quality.

16. The Commission finds that the SC Health Department water monitoring program in addition to the water quality monitoring program required under SCE&G's shoreline plan will provide adequate information concerning the water quality in the vicinity of the proposed dock.¹⁸ SCE&G will be required to remedy any adverse impacts that may be detected by the monitoring programs.

B. Shoreline Impact/Erosion

17. Saluda Shores contends that the additional boats in the cove will affect shoreline stability and erosion. It also claims that the potential for instituting a no-wake zone would restrict use of the waters around its community.

18. Under SCE&G's shoreline plan, excavation permits require that all displaced soil be moved above the 360-foot contour and must be stabilized and top seeded to prevent erosion. It also requires a maximum 4-to-1 slope for excavated areas without riprap. Given that the cross-sectional drawings included in the application for Westshore's excavation proposal show 3-to-1 side slopes for the excavated areas, SCE&G will have to require that Westshore either riprap these slopes or make the sides of the excavated areas a minimum 4-to-1 slope, in to meet the slope-stability specifications of the shoreline management plan.¹⁹ With the proper implementation of these measures, we find the proposed dock and slip facilities and associated lake-bed excavations would have only minimal, short-term impacts on shoreline erosion in the area.

¹⁸ We also note that the SC Health Department issued a conditional Water Quality Certification/Construction in Navigable Waters Permit that imposed various conditions on the construction of the proposed dock aimed at reducing the negative effects of the proposed construction on water quality. *See* SCE&G's application filed in Project No. 516-388, at Exhibit 2.

¹⁹ *See* EA at section 5.2.2, at Environmental Effects - Shoreline Stability and Soil Erosion. In addition, the Corps and SC Health Department permits impose various conditions that require Westshore's implementation to minimize erosion and sedimentation. *See* EA at section 5.2.2, at Environmental Effects - Shoreline Stability and Soil Erosion.

19. Just west of the proposed boat dock site, the shoreline has been disturbed by the previous development of a county road (S-41-88) and vegetation between the road and the shoreline is scarce. Because of the limited space between the proposed dock and the adjacent shoreline, it is unlikely that boats would reach speeds high enough to create wakes as they maneuver in and out of the dock's slips. Therefore, the stability of the shoreline in the immediate area of the dock would not be affected by wake-generated-wave erosion.²⁰

20. We note that the boats traveling through the cove to and from the proposed boat dock and courtesy slips would increase the potential for erosion along the cove's shoreline due to the increased frequency and duration of wake-generated waves. However, as discussed in the EA, the potential incremental effect on shoreline stability is not great enough to warrant any special control measures such as a no-wake zone.²¹ Accordingly, we find that the proposed facility will have only a minimal impact on shoreline stability and erosion in the cove.

C. Fish and Wildlife Habitat

21. DOI and FWS are concerned about the cumulative effects of shoreline development on fish and shallow-water habitats, and wildlife and vegetated-cove habitats. Both say that shoreline development activities that include large lake-bed excavations, such as this one, cumulatively result in the loss of: (1) shallow-water habitats that are particularly important for fish and invertebrate spawning and rearing; and (2) shoreline habitats that are vital to a variety of wildlife species, including migratory birds, game and non-game mammals, reptiles, and amphibians. Lake Watch and Murray Association also express similar concerns.

22. The excavated areas around the proposed facilities would permanently displace about one acre of shallow-water habitat. Considering the extensive shallow-water areas associated with Lake Murray's 650 miles of shoreline, this one-acre loss would be a minor incremental contribution to cumulative effects on

²⁰ *Id.*

²¹ *Id.*

important spawning and rearing habitat.²² However, considering the extensive development that exists along Lake Murray's shoreline,²³ there have already been substantial cumulative adverse effects on this habitat type. Therefore, in order to compensate for the adverse effect of Westshore's excavations on fish and invertebrate spawning and rearing areas, as a condition for approving SGE&G's application for Westshore's excavation proposal, the licensee will be required to include in any permit issued for the excavations a condition requiring the grantee to restore, or enhance, an appropriate amount of shoreline habitat on Lake Murray.

23. Specifically, SCE&G must require that Westshore plant native vegetation, such as buttonbush or willows, at a shoreline location selected in consultation with the South Carolina Department of Natural Resources (SC Natural Resources). The recommended plantings should be sized and designed to offset the incremental cumulative effect of the proposed excavations on shallow-water and associated riparian habitats.²⁴ We find that compliance with this condition will result in minimal impacts on existing fish and wildlife populations.

D. Navigation and Recreation

24. Several intervenors expressed concern that the increase in boat traffic and congestion in the cove where Spinner's Marina is located would restrict, if not eliminate, existing uses such as recreational skiing, family tubing, or just floating on the lake. They also contend that the proposed facilities and associated excavation would create public safety issues. Several of the letters from local

²² See EA section 5.2.1, at Environmental Effects, Fisheries.

²³ Currently, approximately 60 percent of the shoreline is developed. See *South Carolina Electric & Gas Co.*, 109 FERC at P 37.

²⁴ We note that the Corps and SC Health Department permits issued to Westshore require additional conditions and mitigation measures that will minimize the impact the proposed facilities will have on fish and wildlife habitat. See EA section 5.2.1, at Environmental Effects – Fisheries, and section 5.2.2, at Environmental Effects – Wildlife and Riparian Habitat.

residents filed in Westshore's answer, on the other hand, assert that more boat docks are needed in that area.

25. The proposed facilities would be located on the southern side of the cove on the end of a peninsula that runs parallel to Prices Bridge Road. The proposed dock is approximately 60 feet from the shoreline and, at normal summer lake levels, there would be approximately 335 feet between the edge of the proposed facilities and the closest eastern shoreline.²⁵ Accordingly, we find that the proposed facility will not significantly affect navigation in the cove.

26. While the traffic generated by the proposed boat dock would moderately increase the number of boats in this portion of Lake Murray, we conclude that the proposed facility will not significantly affect recreation in the area. Additional traffic generated by the proposed dock facilities will be dispersed temporally throughout the day and geographically throughout the lake as each individual boat or jet-ski will travel to its preferred destination. Boats will return into the cove in an equally diffuse manner.²⁶ Further, the mouth of the cove is wide enough to accommodate an increase in boat traffic.²⁷ Therefore, we find that the proposed facilities would have only a minimal impact on recreation.

27. Additionally, as discussed above, in order to meet SCE&G's excavation specifications, Westshore would be required to either riprap the sides of the excavation area, or make the sides a minimum 4-to-1 slope. To address the potential safety hazard created by the excavation, SCE&E shall require that

²⁵ See EA Figure 2.

²⁶ *Id.* at section 5.2.5, at Environmental Effects, Boating Use and Navigational Safety.

²⁷ In addition, the Corps permit issued for the proposed excavations imposes numerous conditions to limit the impact the excavation activities will have on navigation in the area. See EA section 5.2.5, at Environmental Effects – Boating Use and Navigational Safety.

Westshore post warning signs along the shoreline alerting the public to the adjacent drop-off.²⁸

E. Scenic, Aesthetic, and Noise Impacts

28. The intervenors state that the proposed facilities will result in adverse impacts to the scenic and aesthetic values of the cove. They also contend that the proposed facilities will have adverse impacts on the quality of life for adjacent property owners, including increases in the ambient noise level. Lake Watch claims that the road and embankment provide a beautiful panoramic view for those who are not fortunate enough to afford lake front property.

29. The proposed boating facilities may have a slight adverse impact on the scenic quality of the cove. However, given the current level of shoreline development within the cove, including the marina's existing facilities, private docks and homes, and a bridge, the proposed boat dock and courtesy slips would be in scale with their surroundings and would blend with the existing visual character of the area. For those who would continue to access the shoreline to fish where the proposed dock parallels County Road S-41-88, a moderate reduction in aesthetic enjoyment may be experienced due to the close proximity of the dock and associated boats and the intrusion of these features on the panoramic views of the cove available from this shoreline location.²⁹

30. During construction of the proposed boat dock and courtesy slips, and the excavation of associated lake-bed areas, machinery and equipment operation and other construction-related activities would cause temporary noise-producing disturbances. Also, the additional boats resulting from the proposed marina facilities would cause intermittent increases of the area's ambient noise levels. However, given the current noise levels in the cove from boaters, residents, and

²⁸ See EA at section 5.2.5, at Environmental Effects, Shoreline Access.

²⁹ See EA at section 5.2.7, at Environmental Effects, Visual Character and Scenic Quality.

vehicular traffic, these incremental noise increases are not expected to cause any major aesthetic disturbances.³⁰

31. Additionally, we will require SCE&G to include the following conditions adapted from article 30 of the project license in the permit.³¹ These permit conditions will help ensure that the grantee would properly monitor and control noise, and other undesirable aesthetic effects, associated with its commercial operation:

1. Westshore's permitted use and occupancy of project lands and waters shall not endanger health, create a nuisance, or otherwise be incompatible with the project's overall purposes, including public recreation and resource protection.
2. Westshore shall take all reasonable precautions to ensure that the permitted use of project lands and waters shall occur in a manner that will protect the scenic, recreational, and other environmental values of the project.

F. Shoreline Plan

32. Lake Watch opposes Westshore's excavation proposal because it is not consistent with SCE&G's shoreline plan, which states that multi-slip docks must be located in an area where water depths are adequate for dock development without requiring any excavation. DOI and FWS also state that they normally

³⁰ *Id.*, at Environmental Effects, Ambient Noise Levels. Additionally, the intervenors maintain that the noise pollution and boating congestion will have an adverse impact on property values. However, waterfront property tends to appreciate in value, and the intervenors provide no information to support their claim.

³¹ License article 30 provides that the licensee: (1) has the continuing responsibility to supervise and control non-project uses and occupancies of project lands and waters; and (2) shall take any action necessary to correct violations of conditions imposed by the licensee for the protection of the project's scenic, recreational, and other environmental values.

recommend that boat slips, especially at commercial marinas, be installed a sufficient distance from the shore to avoid the need for dredging.

33. As stated, the purpose of the shoreline plan is to: (1) provide lake management policies to maintain and conserve the area's natural and man-made resources; (2) comply with the terms of the Saluda Project license and the Commission's regulations and orders; and (3) provide a balance between recreation and environmental protections and development control. While section III.A.9. of SCE&G's Commercial Multi-Use Dock Application Procedures states that multi-use docks must be located in an area where water depths are adequate for the development of the project without requiring any excavation,³² its shoreline plan permits excavation subject to certain conditions.³³

34. SCE&G's request for authorization is essentially a request to waive the provisions of its shoreline plan. The proposed facilities will help meet the demand for additional marina facilities in the upper-lake zone of Lake Murray in a safe and environmentally-compatible manner and will promote regional economic growth and tourism through boat sales and services, slip rentals, employment benefits, and tax revenues. The excavations will be required to conform with all the other provisions of the shoreline plan in addition to the mitigation measures recommended in the EA and required by this order. Accordingly, we find that the proposed facilities and excavation and their minor environmental impacts will be outweighed by the additional recreational and economic benefits created by the additional access created by the proposed facilities. We note, however, that SCE&G must reserve the right to supervise and control Westshore's marina-development activities to ensure that all permit conditions are implemented to SCE&G's satisfaction, including mitigation measures required by the Corps and SC Health Department permits.

³² See SCE&G's Commercial Multi-Use Dock Application Procedures, which is attached as Exhibit 5 to SCE&G's August 27, 2003 application filed in Project No. 516-379.

³³ See Shoreline Management Plan brochure filed in Exhibit AIR7A to SCG&E's March 28, 2002 filing in Project No. 516-318.

G. Cultural Resources

35. While there are no known historic properties in the area of potential effect, there is the possibility that archaeological or historical resources could be discovered during the proposed excavations and during construction of the proposed facilities. Accordingly, SCE&G shall require Westshore, if any archaeological or historic artifacts are discovered during the permitted work, to take appropriate steps, including stopping work and consulting with the South Carolina Historic Preservation Officer and Indian tribes that may be concerned.

CONCLUSION

36. We conclude that construction and operation of the proposed facilities will not constitute a major federal action significantly affecting the quality of the human environment, will not interfere with the licensed project purposes, and will be consistent with the statutory standards by which we regulate hydropower projects. Accordingly, we approve SCE&G's application to permit the proposed use of project lands and waters.

The Commission orders:

(A) South Carolina Electric & Gas Company's applications for non-project use of project lands and waters of the Saluda Project No. 516, filed on December 10, 2003 and June 25, 2004, are approved as conditioned in ordering paragraphs (B) through (F) below.

(B) South Carolina Electric & Gas Company shall include a condition in the permit requiring Westshore Limited to restore, or enhance, an appropriate amount of shoreline habitat on Lake Murray by planting native vegetation, such as buttonbush or willows, at a location selected in consultation with SC Natural Resources, and with the approval of South Carolina Electric & Gas Company. The required plantings shall be sized and designed to fully compensate for the incremental cumulative effects of the approved facilities and excavations on shallow-water and riparian habitats.

(C) South Carolina Electric & Gas Company shall include in the permit a condition requiring Westshore to post warning signs along the shoreline after the area under the adjacent dock has been excavated to alert the public to the steep drop-off associated with the excavation.

(D) South Carolina Electric & Gas Company shall include the following conditions in the permit:

1. Westshore's permitted use and occupancy of project lands and waters shall not endanger health, create a nuisance, or otherwise be incompatible with the project's overall purposes, including public recreation and resource protection; and
2. Westshore shall take all reasonable precautions to ensure that the permitted use of project lands and waters shall occur in a manner that will protect the scenic, recreational, and other environmental values of the project.

(E) South Carolina Electric & Gas Company shall reserve the right in the permit to supervise and control Westshore's marina-development activities to ensure that all permit conditions are implemented to South Carolina Electric & Gas Company's satisfaction, including mitigation measures required by this order and the U.S. Army Corps of Engineers and South Carolina Department of Health and Environmental Control permits.

(F) South Carolina Electric & Gas Company shall include in the permit a condition requiring Westshore Limited to notify the licensee in the event any archaeological materials are discovered during construction of the permitted marina facilities, and the associated excavations. In such event, all work in the vicinity of the discovered materials shall stop. The licensee shall consult with the South Carolina State Historic Preservation Officer and any Native American tribes that may attach traditional religious or cultural values to the discovery in order to determine the steps to be taken to evaluate the materials and to protect any resources found to be significant. The licensee shall notify Westshore Limited as to when, and under what conditions, the permitted work may resume.

(G) The late motions to intervene filed in this proceeding by Richard and Gayle Ratcliffe, Frank Jr. and Tracey Taylor, and James E. and Faye P. Cromer are granted.

(H) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713 (2004).

By the Commission. Commissioner Kelly dissenting in part with a separate statement attached.

(S E A L)

Linda Mitry,
Deputy Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

South Carolina Electric & Gas Company Project Nos. 516-388 and -394

(Issued November 26, 2004)

KELLY, Commissioner, *dissenting in part*:

I believe the Commission should reject SCE&G's excavation proposal on the basis that it is prohibited by the Shoreline Management Plan (SMP) and SCE&G has provided no basis for waiver of the SMP's prohibitions. The SMP states that multi-slip docks must be located in an area where water depths are adequate for dock development *without requiring any excavation*. As the United States Fish and Wildlife Service (FWS) explained in its comments to the proposal, there is good reason for such a requirement: "[g]enerally, boat slips, especially commercial marinas, are recommended to be installed a sufficient distance from the shore to avoid the need for dredging." This requirement is designed to promote development of marinas in areas with lake levels that are sufficient for docking activities. SCE&G has not indicated why it is unable to build the proposed dock at another site where existing lake levels do not require excavation.

The Commission has encouraged public participation and stakeholder involvement in promoting the use and development of SMPs. SMPs have significance and meaning to the parties who invest in the process, and I do not think we should set aside the SMPs unless we have a valid reason to do so. Not only has SCE&G failed to provide us with a reason to grant waiver of its SMP, but the equities also strongly suggest that waiver is not appropriate here.

The proposed excavation work would permanently displace about one acre of shallow-water and riparian habitat. In their comments, Department of Interior (DOI) and FWS have stressed their concerns about development along Lake Murray and about the cumulative effects to fish, wildlife, shoreline, and shallow water and vegetated cove habitats. According to FWS, shoreline development and large excavation projects, such as this one, will cumulatively result in the loss of shoreline and shallow water habitats that are vital to a variety of wildlife species

including migratory birds, game and non-game mammals, reptiles, amphibians, fish, and invertebrates. These areas are particularly important for fish and invertebrate spawning and rearing. On the other hand, the proposal will provide few benefits. At best, the Environmental Assessment indicates that the excavation may extend by one month on each side of the summer season the period when the dock slips will be used. Once again, if the dock slips were located a sufficient distance from shore, usage during these two months would not be an issue. Finally, given that the site footprint is under water under all normal circumstances experienced during operation of this project and the Army Corp of Engineer's permit prohibits underwater excavation, it is questionable whether the work can be performed at all.

Accordingly, I would reject SCE&G's excavation proposal because it is prohibited by the SMP, no grounds for waiver have been presented, and, in any event, the equities do not support waiver.

Suedeem G. Kelly